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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,155	05/04/2007	Claus Pedersen	884A.0148.U1(US)	6810
29683 7590 11/25/2008 HARRINGTON & SMITH, PC 4 RESEARCH DRIVE, Suite 202 SHELTON, CT 06484-6212			EXAMINER LEE, CHUN KUAN	
			ART UNIT 2181	PAPER NUMBER
			MAIL DATE 11/25/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/589,155	<b>Applicant(s)</b> PEDERSEN ET AL.	
	<b>Examiner</b> Chun-Kuan Lee	<b>Art Unit</b> 2181	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): Please see Continuation Sheet below.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 1,3-10,12-28,34-41,43 and 44.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Please see Continuation Sheet below.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/Alford W. Kindred/  
 Supervisory Patent Examiner, Art Unit 2181

Continuation of 5. Applicant's reply has overcome the following rejection(s): Rejection of claims 16, 21, 34 and 43-44 under 35 U.S.C. 112 second paragraph.

In response to applicant's arguments (on page 11, 3rd paragraph) with regard to the independent claim 1 rejected under 35 U.S.C. 103(a) that the combination of the references does not teach/suggest the claimed feature that the command effectively commands 'do something on this identified data' but does not specify what should be done, because Rao discloses the use of "conventional" command, as the enhancement commands operate in a conventional way by specifying a particular executable rather than specifying execution of an unidentified executable; applicant's arguments have fully been considered, but are not found to be persuasive.

The examiner respectfully disagrees, because Rao's command itself is not conventional, because the command is an enhancement command, wherein such command does not previously exist/conventional to SyncML technology. As for the claim feature of the command that commands 'do something on this identified data' but does not specify what should be done, the examiner is relying on SyncML Meta-Information DTD's and Szeto's teaching.

In response to applicant's argument (on page 11, last paragraph to page 12, 1st paragraph) that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Rao's teaching is operating in accordance to the SyncML technology, therefore it would then be motivated to combine SyncML operational specification (i.e. SyncML reference) into Rao so that Rao's teaching can properly operate in the SyncML environment.

In response to applicant's arguments (on page 12, 2nd paragraph to page 13, 3rd paragraph) with regard to the independent claim 1 rejected under 35 U.S.C. 103(a) that the combination of references does not teach/suggest the claimed feature that the command effectively commands 'do something on this identified data' but does not specify what should be done, because Szeto's control message specifies an IM application to be retrieved using an identifier; applicant's arguments have fully been considered, but are not found to be persuasive.

The examiner respectfully disagrees, because with regard to the received IM message including the identifier, the initial application initiated for the received IM message would be the corresponding IM application (e.g. well known MSN messenger), and subsequent to examining the IM message and the corresponding identifier (e.g. metadata) will the supporting application (e.g. application other than the initial initiated application) be initiated; therefore, the supporting application is identified using the identifier metadata in the IM message. Furthermore, the examiner expressly relied on SyncML Meta-Information DTD for the teaching corresponding to metadata for the SyncML environment.

In response to applicant's arguments (on page 13, 4th paragraph) with regard to the independent claim 1 rejected under 35 U.S.C. 103(a), wherein applicant appears to be arguing that Szeto is nonanalogous art, because Szeto clearly has no relation to SyncML and there is no disclosure of using metadata to determine content type of data; applicant's arguments have fully been considered, but are not found to be persuasive.

Please note that it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

In this case, not only is Szeto in the field of applicant's endeavor, as Szeto's invention is implement in a network environment (e.g. SyncML also operate in a network environment); furthermore, Szeto is reasonably pertinent to the particular problem with which the applicant was concerned, which is to identify the corresponding application using metadata (e.g. identifier of the IM message).

Applicant's amendments do not change how the examiner is relying on the prior art of record for the teaching of the claimed features. And, in responding to all applicant's arguments, the examiner will maintain his position and the current rejection of record.